Criteria for Comprehensive Review

The Health Care Market Oversight (HCMO) program ensures that transactions involving health care entities support the goals of health equity, lower costs, increased access, and better care. Under ORS 415.500 et seq., the Oregon Health Authority (OHA) reviews proposed material change transactions and monitors health care markets. For more information, visit the program website.

You can get this document in other languages, large print, braille or a format you prefer free of charge. Contact us by email at hcmo.info@oha.oregon.gov or by phone at 503-945-6161. We accept all relay calls.

In accordance with ORS 415.501 and OAR 409-070-0060, if at the conclusion of a 30-day preliminary review OHA determines the proposed transaction does not meet the preliminary review criteria necessary to approve the transaction, OHA will move to a 180-day comprehensive review. This document outlines the criteria OHA uses to determine whether a transaction can be approved following preliminary review and hence whether the transaction should undergo a comprehensive review.

Criteria for Comprehensive Review

OHA will conduct a comprehensive review of a proposed material change transaction if, at the conclusion of preliminary review, OHA is unable to establish that the transaction meets one or more of the following criteria for approval of the transaction as set forth in ORS 415.501 and OAR 409-070-0055(2):

1. The transaction is in the interest of consumers (i.e. there are no adverse impacts on cost, access, quality, or equity) and is urgently needed to maintain the solvency of one of the entities involved in the transaction;
2. The transaction is unlikely to substantially reduce access to affordable health care in Oregon;
3. The transaction is likely to meet the criteria for comprehensive review, as outlined in OAR 409-070-0060 and ORS 415.501;
4. The transaction is not likely to substantially alter the delivery of health care in Oregon; or
5. Comprehensive review of the transaction is not warranted given the size and effects of the transaction.

Assessing the Potential for Adverse Impacts

This section details the circumstances under which OHA would conclude that the transaction may have an adverse impact in each of the domains of cost, access, equity, and quality. These domains are further described in HCMO's analytic framework.

OREGON HEALTH AUTHORITY

Cost Domain

A transaction may have an adverse impact in the cost domain if it has the potential to result in any of the following:

- An increase in market concentration, as measured by the Herfindahl-Hirschman Index (HHI), of 100 points or more such that the post-transaction HHI is 1,800 or higher.
- An increase in market concentration, as measured by the HHI, of 100 points or more such that the post-transaction market share of the merged firm exceeds 30%.
- An increase in prices (premiums, cost sharing, provider reimbursement rates) for health care services paid by consumers (e.g., patients, members) or payers (e.g., insurers, employers, or governments).
- An increase in total health care expenditures for the entities or the state.

Example of a transaction with potential adverse impact on cost:
A group of pediatricians is entering into a new affiliation with another pediatrician group. Under the affiliation, the two groups would negotiate service rates jointly with a major commercial payer. There are no other pediatricians in the joint service area of the two physician groups. The increase in market concentration for pediatric primary care services resulting from the transaction is likely to increase the entities' bargaining power with payers, which could result in higher negotiated rates for services. The transaction may therefore have an adverse impact on prices for pediatric services.

Access Domain

A transaction may an have adverse impact in the access domain if it has the potential to result in any of the following:

- A reduction in availability of services (e.g., through a reduction in the number of providers or locations offering services).
- A reduction in access for specific subpopulations (e.g., due to discontinuation of certain business lines or reduction in services targeting specific groups, such as Medicaid members or persons with behavioral health conditions).

Example of a transaction with potential adverse impact on access:
A health system is acquiring a rural hospital and plans to eliminate inpatient mental health/substance use disorder services at the rural hospital to generate system-wide efficiencies. The hospital's financial reports suggest it is in good financial condition, and the Notice of Material Change Transaction does not mention any financial challenges. As a result of the acquisition, some patients in the rural hospital's service area would need to travel substantially greater distances to receive services. The health system does not have a plan in place for maintaining access to these services.

Equity Domain

A transaction may have an adverse impact in the equity domain if it has the potential to result in any of the following:

- A disproportionate reduction in availability of services for populations experiencing health inequities (e.g., low-income individuals, certain racial/ethnic groups, LGBTQ+ individuals, people with disabilities, people with limited English proficiency).
- A disproportionate decrease in quality for populations experiencing health inequities.
- A reduction in engagement with the local community or reduced consideration of community needs in decisions regarding service provision or investment. (For example, if there are plans that would reduce the involvement of a community board in a hospital's decision-making or reduce community involvement in the hospital's community benefit planning.)
- A reduction in availability of culturally appropriate services, translation/interpretation services, traditional/community health workers, or social needs screening/referral services.

Example of a transaction with potential adverse impact on equity:
A large primary care clinic serving 50% Medicaid, 45% commercial, and 5% uninsured patients is being acquired by a medical group based in another region of the state. The clinic is financially stable, has strong ties to the surrounding community and a record of engagement with local community organizations on projects addressing housing and food insecurity. Under the acquisition, management of care delivery, including decisions on services, staffing, and clinical practices would move from the clinic staff to management and clinical personnel at the acquirer's main location. A community-based organization submits public comments to OHA expressing concern that the acquisition would exacerbate health inequities by reducing responsiveness to the needs of the local population.

Quality Domain

A transaction may have an adverse impact in the quality domain if it has the potential to result in any of the following:

- A worsening of performance on quality measures related to clinical processes (e.g., use of evidence-based practices or participation in care delivery transformation initiatives).
- A worsening of performance on quality measures related to patient outcomes (e.g., increases in avoidable Emergency Department visits, hospitalizations, readmissions, or complications).
- A worsening of performance on quality measures related to patient experience (e.g., patients' overall rating of care, wait times, customer service complaints).

Example of a transaction with potential adverse impact on quality:
A hospital is acquiring a profitable ambulatory surgery center (ASC) located in its service area. Five years earlier, the hospital acquired another ASC outside its service area. Shortly after the acquisition, there were multiple public reports of clinical malpractice and evidence (as measured by multiple HEDIS metrics) of an overall deterioration in quality at the acquired ASC. OHA receives public comments pointing to this history and arguing that the acquisition would lead to a similar deterioration of quality.

Statutory and Administrative Rule Guidance

Statutes

ORS 415.501(6)

Following a preliminary review, the authority or the department shall approve a transaction or approve with conditions designed to further the goals described in subsection (1) of this section based on criteria prescribed by the authority by rule, including but not limited to:

(a) If the transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved in the transaction; or
(b) If the authority determines that the transaction does not have the potential to have a negative impact on access to affordable health care in this state or the transaction is likely to meet the criteria in subsection (9) of this section.

ORS 415.501(7)(a)

Except as provided in paragraph (b) of this subsection, if a transaction does not meet the criteria in subsection (6) of this section, the authority shall conduct a comprehensive review and may appoint a review board of stakeholders to conduct a comprehensive review and make recommendations as provided in subsections (11) to (18) of this section. The authority shall complete the comprehensive review no later than 180 days after receipt of the Notice unless the parties to the transaction agree to an extension of time.

ORS 415.501(8)(c)

The authority shall prescribe by rule:

(c) Criteria for when to conduct a comprehensive review and appoint a review board under subsection (7) of this section that must include, but is not limited to:
   A. The potential loss or change in access to essential services;
   B. The potential to impact a large number of residents in this state; or
   C. A significant change in the market share of an entity involved in the transaction.

ORS 415.501(9)

A health care entity may engage in a material change transaction if, following a comprehensive review conducted by the authority and recommendations by a review board appointed under subsection (7) of this section, the authority determines that the transaction meets the criteria adopted by the department by rule under subsection (2) of this section and:

(a) (A) The parties to the transaction demonstrate that the transaction will benefit the public good and communities by:
      (i) Reducing the growth in patient costs in accordance with the health care cost growth targets established under ORS 442.386 or maintain a rate of cost growth that exceeds the target that the entity demonstrates is the best interest of the public;
      (ii) Increasing access to services in medically underserved areas; or
      (iii) Rectifying historical and contemporary factors contributing to a lack of health equities or access to services; or
   (B) The transaction will improve health outcomes for residents of this state; and

(b) There is no substantial likelihood of anticompetitive effects from the transaction that outweigh the benefits of the transaction in increasing or maintaining services to underserved populations.

Administrative Rules

OAR 409-070-0055(2)

At the conclusion of the preliminary review described in paragraph (1) of this rule, the Authority must approve, or approve with conditions as provided in OAR 409-070-0065, a material change transaction, or, in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, if the Authority determines that the transaction meets one or more of the following criteria:

(a) The material change transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved in the transaction;
(b) The material change transaction is unlikely to substantially reduce access to affordable health care in Oregon;
(c) The material change transaction is likely to meet the criteria set forth in OAR 409-070-0060;
(d) The material change transaction is not likely to substantially alter the delivery of health care in Oregon; or
(e) Comprehensive review of the material change transaction is not warranted given the size and effects of the transaction.

OAR 409-070-0060(1)

Pursuant to ORS 415.501(7), the Authority must conduct a comprehensive review of a proposed transaction if the Authority determines not to approve the transaction at the conclusion of its preliminary review.